

AUG 25 2003

COMMISSION ON
STATE MANDATES

RESPONSE TO DEPARTMENT OF FINANCE

On Original Test Claim
Chapter 1521, Statutes of 1985; Chapter 72, Statutes of 1990; Chapter 463, Statutes of
2000; California Code of Regulations, Title 24, Part 1, Ch. 4, Art. 1
Health and Safety Code Section 16000 et seq.
Claim no. CSM-02-TC-38

Essential Services Buildings

The following are comments and responses to the letter of the Department of Finance, dated July 24, 2003, regarding the original test claim as submitted by the Sacramento Metropolitan Fire District.

A. Department of Finance's Comments

“As the result of our review, we have concluded that the courts have held that costs to a local entity resulting from an action undertaken at the option of the local entity are not reimbursable as ‘costs mandated by the state’. Specifically, in City of Merced v. State of California, 153 Cal.App.3d 777 (1984), the court said:

‘We agree that the Legislature intended for payment of goodwill to be discretionary. ...whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.’

In County of Contra Costa v. State of California, 177 Cal.App.3d 62, 79 (1986) the court affirmed the City of Merced decision. Based on these court cases, the Department of Finance believes that the provisions of Chapter No. 1521, Statutes of 1985, Chapter No. 72, Statutes of 1990, Chapter No. 463, Statutes of 2000, and Title 24, Part I, Chapter 4, Article 1 of the California Code of Regulations simply make an optional program available to local governments, the costs of which are not reimbursable because they are not costs mandated by the state. Though these statutes and regulations place certain requirements on entities that choose to construct or remodel essential services buildings, the construction or remodeling work itself is optional.”

The Department properly stated the law regarding optional programs as set forth in City of Merced, supra. Yet the Department is in error as to whether that case is applicable to this test claim. It is not.

At issue in *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, was the change in Code of Civil Procedure §1263.510, in 1975, which provided that when the power of eminent domain was exercised, the local government was responsible for reimbursing a business owner for loss of goodwill. The city filed a test claim to obtain reimbursement for the loss of goodwill it had paid out in a 1980 eminent domain action alleging that the statutory change had created a state-mandated program. (*Id.* at p. 780.) On appeal, the court applied “the basic rules of statutory construction” finding that the discretionary nature of the exercise of the power of eminent domain was set forth in the code itself. (*Id.* at p. 783.) The court pointed to Code of Civil Procedure §1230.030 which was part of the same 1975 legislation that provided for the payment for loss of goodwill. The statute stated that the exercise of eminent domain was a discretionary act, as there are other methods of acquiring property. (*Ibid.*) Thus the city had, at its own option, embarked on a course that resulted in it having to pay for loss of goodwill.

The basic holding is this: The city’s decision was discretionary because the city had another option. Or, put another way, there is no mandate if the local entity can act to avoid it. In the instant case, the Department has argued that the choice to construct or remodel essential services buildings is discretionary. This begs the question: What is the other option?

As was clear to the court in *City of Merced*, the city’s discretionary act was the decision to use the power of eminent domain and the other option was that the city could have acquired the land by other means. In attempting to apply this logic to the instant case, the local agency’s discretionary act is to construct an essential services building and the other option is not to construct an essential services building. The problem with this analysis is that the statutory construct of the Essential Services Buildings Seismic Safety Act of 1986 (The Act) is so all encompassing as to be unavoidable. First, the expansion of police, fire, communications and other emergency services is determined by geography and population. In the face of population growth, maintaining the *status quo* in the provision of these necessary services is not an option. Second, the Act applies to not only to the construction of a new essential services building but also to any addition, reconstruction or alteration of an essential services building. (Health and Safety Code §16005) Therefore, even a local agency with an existing essential service building and a steady population may not have the option to avoid the reach of the Act should the building require renovation as it ages. Or, renovation may be required to make use of the newest technology to provide better service.

Within the statutory construct the unavoidability of the Act makes sense: The Legislature did not want to give local agencies the ability to opt out of this program of construction innovation so vital to the ability of the populace to survive future disasters. But, the Legislature was loathe to require construction of all new buildings. As a result, the Legislature, in creating the Act, drew a line in the sand knowing that, in time, new buildings would be built and old buildings renovated. If the Department’s assertion that all essential services building construction and renovation was avoidable was correct, the Act would be without meaning — and the Legislature, by rules of statutory construction, is not capable of passing meaningless law. (58 Cal.Jur.3d 454.)

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 20th day of August, 2003, at Sacramento, California, by:



Don Price, Esq.,
General Counsel
Sacramento Metropolitan Fire District

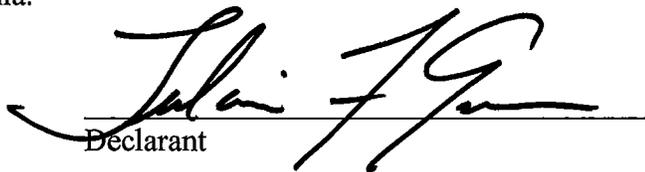
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is Maximus, Inc., 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 25, 2003, I served the Response to the Department of Finance, *Essential Services Buildings*, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed this 25 day of August, 2003, at Sacramento, California.


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